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Supreme Court, U.S.
FILED
MAR 16 1987
JOSEPH F. SPANIOL, JR.
CLERK

CASE NO. _____

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER, 1986 TERM

ON APPEAL FROM THE COURT OF APPEALS
GREENE COUNTY, OHIO

STATE OF OHIO

Plaintiff-Appellee

vs.

LEN CROSS

Defendant-Appellant

JURISDICTIONAL STATEMENT

COUNSEL OF RECORD FOR APPELLANT:

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Question Presented By The Appeal (S. Ct. Rule 15.1(a))

Whether a state may unreasonably restrict an individual's use of his own property in violation of the Fifth and Fourteenth amendments to the Constitution of the United States, by enacting legislation (4549.42(A)(Ohio Revised Code) making it a criminal offense for the owner of a motor vehicle or for someone acting on behalf of said owner to alter the setting on the vehicle's odometer where such alteration is without intent to defraud and where other statutes exist that require any future buyer, transferee of the vehicle to be notified of said alteration?

Listing of all Parties (S. Ct. Rule 15.1(b))

State of Ohio - Plaintiff-Appellee

Len Cross - Defendant-Appellant

TABLE OF CONTENTS (S. Ct. Rule 15.1(c))

	PAGE
Reference to Official and Unofficial Reports	1
Grounds Upon Which Jurisdiction Is Involved	1,2
Constitutional Provisions and Statutes	2
Statement Of The Case	2-4
Reasons Why Question Is Substantial Enough To Require Plenary Consideration	4-6
Appendix	7
Final Entry of Supreme Court of Ohio Dated October 29, 1986	8,9
Opinion of Court of Appeals of Greene County, Ohio dated March 28, 1986	10-22
Final Entry of Court of Appeals of Greene County, Ohio dated March 28, 1986	23,24
Notice of Appeal to United States Supreme Court	25,26
Section 4549.42 Ohio Revised Code	27,28
Section 4549.45 Ohio Revised Code	28
Section 4549.46 Ohio Revised Code	28
Title 28, United States Code, Section 1257	29
Constitution of the United States Fifth Amendment	30
Constitution of the United States Fourteenth Amendment	30,31
Certificate of Service	32

TABLE OF AUTHORITIES (S. Ct. Rule 15.1(c))

PAGE

CASES

City of Youngstown v. Kahn Bldg. Co. 112 Ohio St. 654 (1925). 4,5

State ex rel Book v. Cleveland 20 O.C. C. N. S. 538 (1914). 4,5

STATUTES

Section 4549.42 Ohio Revised Code. . . 1,3,27,28

Section 4549.45 Ohio Revised Code. . . 3,6,28

Section 4549.46 Ohio Revised Code. . . 5,6,28

Section 1257, Title 28 United States Code 1,2,29

CONSTITUTIONAL PROVISIONS

Constitution of the United States, Fifth Amendment. 2,30

Constitution of the United States, Fourteenth Amendment 2,30,31

Reference to Official and Unofficial Reports

(S. Ct. Rule 15.1(d))

None.

Grounds Upon Which Jurisdiction is Involved

(S. Ct. Rule 15.1(e))

This case began as a criminal prosecution of Appellant in the Municipal Court of Fairborn, Ohio for violating an Ohio Statute making it a criminal offense to alter an odometer setting. (Section 4549.42(A) of the Ohio Revised Code). Appeal is taken from the decision of the Supreme Court of Ohio, dated October 29, 1986, dismissing appellant's Appeal and Motion to certify the record of said case on the grounds that no substantial constitutional question exists therein. Notice of appeal was filed in the Supreme Court of Ohio on December 15, 1986. The statutory provision confering jurisdiction on this Court is 28 U.S.C. Section 1257(2) which provides for appeal from final judgments or decrees of the highest court

of a state where the validity of a state statute is raised on the basis of it being repugnant to the constitution, treaties or laws of the United States and where the decision was in favor of said validity.

Constitutional Provisions and Statutes (S. Ct. Rule 15.1(f))

Fifth Amendment to the Constitution of the United States.

Fourteenth Amendment to the Constitution of the United States.

28 U.S.C. Section 1257(2)

(See Appendix for complete text)

STATEMENT OF THE CASE (S. Ct. Rule 15.1(g))

Around May, 1983, Appellant was the New Car Manager of Morningstar Chrysler in Fairborn, Ohio. Robert James and his wife came into the dealership seeking a particular type of car. Appellant located one for them that had about 3,800 miles on it. Mr. James informed the Appellant he did not mind the mileage but his wife would. He said he would purchase the car

if the odometer were replaced so his wife would not know about it. The Appellant discussed the matter with the service manager who replaced the odometer and Mr. James purchased the car. In late 1984, the replacement of the odometer became public knowledge.

Appellant was first charged with violating 4549.45, Revised Code, which charge was amended to allege a violation of Section 4549.42(A). This statute then makes it a criminal offense to alter an odometer or to get someone else to do so, even if it is done by the owner of the vehicle or by someone at his direction and where there is no intent to defraud involved. (This statute is set forth in the Appendix). Appellant filed a Motion to Dismiss attacking the constitutionality of this statute, and raising the issue which is before this Court which the Trial Court orally overruled at a hearing on April 24, 1985. Trial was had before a jury which found the Appellant guilty as charged. The Appellant prosecuted his appeal from this verdict and from the Order of the court overruling his Motion to Dismiss to the Second

District Court of Appeals for Greene County, Ohio and that Court in its Opinion dated March 8, 1986, sustained the Trial Court's verdict and ruling. Appellant appealed and moved the Supreme Court of Ohio for an Order directing the record be certified and again raising the issue which is before this court. The Ohio Supreme Court overruled the motion and dismissed Appellant's appeal on October 29, 1986 by an Entry which stated no substantial constitutional question existed from this decision Appellant now prosecutes his appeal to this court.

Reasons Why Question Is Substantial Enough to Require Plenary Consideration (S. Ct. Rule 15.1 (h))

In the instant case the State of Ohio, through its statutes, has declared that an individual has no right to alter the reading of his odometer even though there is no intent to defraud on his part. For statutory restrictions upon the use of property to be proper, they must be based on the theory they are necessary for the safety, health or morals of the public.

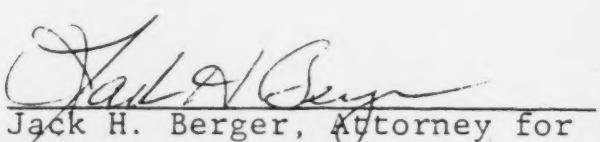
State ex rel Book v. Cleveland 20 O.R.C. N.D. 538 (1941); City of Youngstown v. Kahn Bldg. Co. 112 Ohio St. 654 (1925).

The only possible public interest to be served by such a statute is to prevent a buyer of the motor vehicle from being defrauded or misled as to the mileage on the car. However, the statute in issue does not require any intent to defraud by the party altering the odometer. Furthermore, there are other statutes in Ohio that adequately protect a future purchaser of such a motor vehicle. Section 4549.45 makes it illegal for a person, who knows or suspects that the odometer has been altered, to transfer a car with an odometer that has been changed, tampered with or disconnected to reflect a lesser mileage unless he gives written notification of such fact to the buyer prior to the transfer, Section 4549.46 of the Ohio Revised Code also requires that a transfer must provide information regarding the mileage and odometer at the time of transfer. (The full Text of the aforesaid statutes is set forth in the Appendix).

It is thus apparent that the health, safety,

welfare and morals of the public is adequately served by Sections 4549.45 and 4549.46 of the Ohio Revised Code. There is no legitimate purpose served by the statute in issue. What use an individual makes of his odometer is of no legitimate concern of the State's until the time the vehicle is transfered. This statute potentially effects countless thousands of owners of motor vehicles in Ohio who are restricted from making a use of their property which is harmless and which does not effect anyone else. The case is therefore of substantial constitutional significance. Only by this Court declaring said statute unconstitutional can this situation be corrected and the people of Ohio be restored to the full enjoyment of their property as guaranteed by the Fifth and Fourteenth Amendments of the Constitution of the United States.

Respectfully Submitted:



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APPENDIX

THE SUPREME COURT OF OHIO

COLUMBUS

1986 Term

To wit: October 29, 1986

State of Ohio, :

Appellee, : Case No. 86-833

v. : E N T R Y

Len Cross, :

Appellant. :

Upon consideration of the motion for an order directing the Court of Appeals for Greene County to certify its record and the claimed appeal as of right from same said Court, it is ordered by the Court that said motion is overruled and the appeal is dismissed sua sponte for the reason that no substantial constitutional question exists therein.

COSTS:

Motion Fee, $20.00, paid by J. H. Berger.

FOR YOUR INFORMATION ONLY NOT FOR FILING

FRANK D. CELEBREZZE

CHIEF JUSTICE

I, James Wm. Kelly, Clerk of the Supreme Court of Ohio, do hereby certify that the foregoing order was correctly copied from the records of said Court, to wit, from the Journal of this Court.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed the seal of said Supreme Court, this date _____.

_____CLERK

_____DEPUTY

IN THE COURT OF APPEALS OF GREENE COUNTY, OHIO

STATE OF OHIO :

Plaintiff-Appellee:

vs. : CASE NO. 85 CA 46

LEN CROSS :

Defendant-Appellant

O P I N I O N

Rendered on the 28th day of March, 1986.

.....

JOE R. FODAL, 11½ South Central Avenue, Fairborn, Ohio 45424

Attorney for Plaintiff-Appellee

JACK H. BERGER, 5335 Far Hills Avenue, Kettering, Ohio 45429

Attorney for Defendant-Appellant

.....

WOLFF, J.

Defendant Appellant Len Cross appeals from the judgment entered on the May 2, 1985 jury verdict in the Municipal Court of the City of Fairborn and the April 24, 1985 order of the municipal court overruling his motion to dismiss

the charges.

Cross was originally charged with a violation of R.C. 4549.45[1] on December 19, 1984. Subsequently, on April 24, 1985, the State filed an amended complaint, with leave of court, charging him with a violation of R.C. 4549.42(A).

Prior to the actual filing of the amended complaint, Cross -- anticipating the amended complaint -- filed a motion to dismiss the charge in the amended complaint. In his motion, Cross argued that R.C. 4549.42(A) is unconstitutional because "it attempts to prohibit an act which in no way affects the health, safety or morals of the citizens of this State". On April 24, 1985, an oral hearing on the motion was held and the trial court overruled the motion.

A jury trial was held on May 2, 1985, and

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[1]No person shall transfer a motor vehicle if the person knows or should reasonably know that the odometer of the motor vehicle has been changed, tampered with, or disconnected to reflect a lesser mileage or use, unless that person gives clear and unequivocal notice of such tampering or of his reasonable belief thereof, to the transferee in writing prior to the transfer. In a prosecution for violation of this section, evidence that a transferor or his agent has changed, tampered with, disconnected, or failed to connect the odometer of the motor vehicle constitutes prima-facie evidence of knowledge thereof.

the jury found Cross guilty of tampering with an an odometer in violation of R.C. 4549.42(A). The court entered judgment on the verdict and sentenced Cross to six months in jail, with five months of the sentence suspended, and fined him $750.00. Mr. Cross appeals from that judgment of the municipal court, asserting two assignments of error.

The first assignment of error states: "The trial court erred in overruling appellant's motion to dismiss the charge because section 4549.42(A) of the revised code is unconstitutional."

R.C. 4549.42(A) states:

> No person shall adjust, alter change, tamper with, advance, set back, disconnect, or fail to connect, an odometer of a motor vehicle, or cause any of the foregoing to occur to an odometer of a motor vehicle with the intent to alter the number of miles registered on the odometer. (Emphasis ours.)

Cross argues that R.C. 4549.42(A) is unconstitutional because it restricts the right of an individual to utilize property as he sees fit and bears no relation to any valid interest of the State in protecting the health, safety, morals, or welfare of the public. We disagree.

In Benjamin vs. Columbus (1957), 167 Ohio

St. 103, the Court held that

> (a)lthough almost every exercise of the police power will necessarily either interfere with the enjoyment of liberty or the acquisition, possession and production of property, within the meaning of Section 1 of Article I of the Ohio Constitution, or involve an injury to a person within the meaning of Section 16 of Article 1 of that constitution, or deprive a person of property within the meaning of Section 1 of Article XIV of the Amendments to the Constitution of the United States, an exercise of the police power having such an effect will be valid if it bears a real and substantial relation to the public health, safety, morals or general welfare of the public and if it is not unreasonable or arbitrary.
>
> Whether an exercise of the police power does bear a real and substantial relation to the public health, safety, morals or general welfare of the public and whether it is unreasonable or arbitrary are questions which are committed in the first instance to the judgement and discretion of the legislative body, and unless the decisions of such legislative body on those questions appear to be clearly erroneous, the courts will not invalidate them.

Id., paragraphs five and six of the syllabus; see also Demoise v. Dowell (1984), 10 Ohio St. 3d 92, 96-97.

In overruling the motion to dismiss, the trial court stated:

> The movant advances the argument that the person could change an odometer

every day, but make disclosure at the time of sale. It appears to the Court that this law requires preservation of a record, a mechanical record, of the mileage of the car. An objective record, not a subjective record where some person would supposedly recall the miles that the car had been driven if the odometer were disconnected. And the requiring of this record appears to be to preserve the accurate reading or metering of the miles for a later sale of the automobile.

Counsel agrees that 4549.46 is valid in protecting a future buyer, but this section involved in this action as amended is necessary to effect the keeping of that mechanical record and keep it free from tampering. If a buyer knew what he was buying, what is to protect a subsequent buyer who has no knowledge?

To me, this is clearly a statute that does involve the health, safety, and morals, and the State has the right to anticipate that not all transactions will be honest arm's-length transactions and to prohibit the conduct which is herein prohibited in order to protect the public.

Transcript of April 24, 1985 Hearing, at 10-11.

Clearly, the trial court was correct in finding this statute to be constitutional and a valid exercise of the police power. The prohibition against tampering with odometers bears a real and substantial relation to protecting consumers from buying motor vehicles which have

inaccurate odometer readings (See 29 Ohio Jurisprudence 3d, Criminal Law, Section 2265), and can certainly be characterized as bearing a real and substantial relationship to public health, safety, or general welfare;

Cross argues as follows:

> If a man owns a car and chooses to install a new odometer or even to alter his existing one, in what manner does this action affect the health, safety or morals of the public so long as he keeps the car and does not sell it? Clearly, the answer (sic) is that it does not affect them in the least. It does not affect the road worthiness or safety of the car in the slightest. Therefore, it does not present any physical danger to other motorists on the highway. So long as the individual keeps his car, there is not one tiny bit of affect (sic) that his action has on the health, safety and morals of the public. It is only when the car is transferred that the possibility of a public interest arise. (sic) But in that situation the disclosure require-

ments of Sections 4549.42(C),[2] 4549.45 and 4549.46[3] exist to adequately protect the public and to advise a prospective purchaser of the vehicle's true mileage.

This argument is premised upon the necessary assumptions that there will be compliance with

---

[2]Nothing in this section shall prevent the service of an odometer, provided that after such service a completed form, captioned "notice of odometer repair", shall be attached to the left door frame of the motor vehicle by the person performing such repairs. Such notice shall contain, in bold-face type, the following information and statements:

"Notice of Odometer Repair

The odometer of this motor vehicle was repaired or replaced on . . . . . (date of service).

The mileage registered on the odometer of this motor vehicle before repair was. . . . . (mileage).

The mileage registered on the odometer of this motor vehicle after repair is. . . . . (mileage).

. . . . . Repairman's Signature"

[3]No person shall fail to provide the true odometer disclosures required by section 4505.06 of the Revised Code. The transferor of a motor vehicle is not in violation of this section's provisions requiring a true odometer reading if the odometer reading is incorrect due to a previous owner's violation of any of the provisions contained in sections 4549.42 to 4549.46 of the Revised Code, unless the transferor knows of the violation.

these sections, and that these sections will be sufficient to accomplish the legislature's purpose in all situations.

However, we conclude that both of these assumptions are flawed. There are situations where the person obligated to comply will simply fail to do so.

Furthermore, there are numerous situations where ownership is transferred by operation of law[4] in which the owner who has previously tampered with the odometer can hardly be expected to comply with the disclosure requirements of R.C. 4549.45 and 4549.46.

A non-owner with access to a car, e.g., the husband of a woman whose name the car is titled, might, without the owner's knowledge, tamper with the odometer. The owner, upon sale, would not be able to reveal the true mileage on the car.

In these situations, transferees of cars will not receive accurate information about the mileage of the cars they acquire. When these transferees become transferors, this ignorance

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[4]See R.C. 4505.10.

will be perpetuated in their transferees.

It is common knowledge that most cars will change hands several times over their useful lifetimes.

Because R.C. 4549.42(C), 4549.45, and 4549.46 do not in all situations assure the legislative purpose that transferees of automobiles receive true mileage figures, we conclude that there is indeed a real and substantial relationship of R.C. 4549.42(A) to the public health, safety, or general welfare, and that it is neither unreasonable nor arbitrary for the legislature to directly prohibit tampering with odometers.

The first assignment of error is overruled.

The second assignment of error states: "The verdict was against the manifest weight of the evidence."

> (I)n considering an assignment of error in a criminal case which attacks the sufficiency of evidence, a certain perspective is required. This court's examination of the record at trial is limited to a determination of whether there was evidence presented, 'which, if believed, would convince the average mind of the defendant's guilt beyond a reasonable doubt.' Our review is thus confined to a determination of whether there was substantial evidence.

State v. Ely (1978), 56 Ohio St. 2d 169, 172 (citations omitted).

Cross contends that he could not be found guilty of violating R.C. 4549.42(A) because he did not change the odometer himself nor did he cause the odometer on the car to be changed.[5] Cross was the New Car Manager of Morningstar Chrysler at the time of the incident. (Tr. at 81). He argues that he had no authority to order the service manager to change the odometer and thus could not have caused the mileage to be changed within the meaning of R.C. 4549.42(A). He also argues that he cannot be found guilty of violating R.C. 4549.42(A) because the customer, Mr. Jones, and not he was the instigator of the odometer change.[6]

Black's Law Dictionary (5 Ed. 1979) defines cause as follows: "To be the cause or occasion of,

[5]One of the mechanics at Morningstar Chrysler took the original speedometer head out of the car and installed a new unit. (Tr. at 70).

[6]Jones himself denied instigating the odometer change. However, other State witnesses quoted Cross as claiming Jones instigated the odometer change, and defense witnesses testified Jones bragged about instigating the odometer change. Cross himself claimed Jones was the instigator.

to effect as an agent, to bring about, to bring into existence; to make; to induce; to compel." Under this definition, we think Cross could have violated R.C. 4549.42(A) by merely acting as a middleman between the customer (instigator) who asked him to change the odometer reading and the service manager, who had a mechanic install a new speedometer head. He could be said to have induced or brought about the unit switch or to have effected the switch as the customer's agent. Therefore, if there was sufficient evidence that Cross acted as a middleman to induce the speedometer head change that that would be enough to prove he caused the prohibited act.

We find that there was substantial evidence which, if believed by the jury, would support the jury's finding Mr. Cross guilty of violating R.C. 4549.42(A) beyond a reasonable doubt. The evidence shows that the 1983 New Yorker which was sold to Mr. Jones had 3,846 miles on the odometer when Morningstar Chrysler obtained it from Lebanon Chrysler-Plymouth (Tr. at 78, 17, 45, 48) and it had only 16 miles on the odometer

when it was later sold to Mr. Jones. (Tr. at 19, 21, 48, 59, 79). The evidenct also indicates that Mr. Cross asked Mr. Freese -- the service manager at Morningstar -- to "take the miles off" the New Yorker because Mr. Jones had requested it. (Tr. at 70, 72, 75, 80, 86). The alleged reason Jones requested that miles be taken off was that he wanted the car but his wife would not buy it with so many miles on it. (Tr. at 70, 80-81). The evidence further shows that the speedometer head with over 3,000 miles on it was removed and another speedometer head with about one mile on it was installed. (Tr. at 70).

We do not think it important that Cross may have lacked the authority to order the service manager to change the odometer, or that Jones was the instigator. There was evidence that Cross asked Freese to "take the miles off" because Mr. Jones wanted it done, and Freese had it done upon that request. (Tr. at 72, 75, 80, 86). As such, Cross acted as Jones' agent to affect the odometer change and, as such, Cross "caused" the odometer tampering for the purposes of R.C. 4549.42(A).

Thus, we find that there was "substantial evidence upon which a jury could reasonably conclude that all elements of the offense (of causing odometer tampering in violation of R.C. 4549.42(A)) ha(d) been proven beyond a reasonable doubt". Eley, supra, syllabus.

The second assignment of error is overruled.

The judgement of the trial court will be affirmed.

.....

BROGAN, P.J. and WILSON, J. concur.

Copies mailed to:

Joe R. Fodal

Jack H. Berger

Hon. Karl R. Wettlaufer

IN THE COURT OF APPEALS OF GREENE COUNTY, OHIO

STATE OF OHIO :

Plaintiff-Appellee :

vs. : CASE NO. 85 CA 46

LEN CROSS :

Defendant-Appellant : FINAL ENTRY

Pursuant to the opinion of this court rendered on the 28th day of March, 1986, the judgment of the trial court is affirmed.

_____

JAMES A. BROGAN, Presiding Judge

_____

RICHARD K. WILSON, Judge

_____

WILLIAM H. WOLFF, JR., Judge

Copies mailed to:

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Jack H. Berger

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Kettering, Ohio 45429

IN THE SUPREME COURT OF OHIO

STATE OF OHIO	:	Case No. 86-833
Plaintiff-Appellee,	:	NOTICE OF APPEAL TO THE
-v-	:	UNITED STATES SUPREME
LEN CROSS	:	COURT
Defendant-Appellant	:	

Notice is hereby given that Len Cross, the defendant-appellant above-named, hereby appeals to the Supreme Court of the United States from the order of this Court entered in this action October 29, 1986, that the motion to certify the record of the Court of Appeals for Greene County should be dismissed for the reason that no substantial constitutional question exists herein.

This appeal is taken pursuant to 28 U.S.S.C. Sec. 1257(2).

Dated December 12, 1986.

Jack H. Berger
Attorney for Defendant-Appellant
5335 Far Hills Avenue
Kettering, Ohio 45429

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served upon Joe R. Fodal, Prosecuting Attorney, by mailing him copy by regular mail to his address at 11½ South Central Avenue, Fairborn, Ohio 45324 on this 12th day of December, 1986.

_____

Jack H. Berger

OHIO REVISED CODE

Section 4549.42 (Tampering; notice of odometer repair.)

(A) No person shall adjust, alter, change, tamper with, advance, set back, disconnect, or fail to connect, an odometer of a motor vehicle, or cause any of the foregoing to occur to an odometer of a motor vehicle with the intent to alter the number of miles registered on the odometer.

(B) Division (A) of this section does not apply to the disconnection of an odometer used for registering the mileage of any new motor vehicle being tested by the manufacturer prior to delivery to a franchise dealer.

(C) Nothing in this section shall prevent the service of an odometer, provided that after such service a completed form, captioned "notice of odometer repair", shall be attached to the left door frame of the motor vehicle by the person performing such repairs. Such notice shall contain, in bold-face type, the following information and statements:

"Notice of Odometer Repair

The odometer of this motor vehicle was repaired or replaced on..... (date of service).

The mileage registered on the odometer of this motor vehicle before repair was..... (mileage).

The mileage registered on the odometer of this motor vehicle after repair is..... (mileage).

.....
(Repairman's signature)"

(D) No person shall intentionally remove or alter the notice required by division (C) of this section.

(E) If after the service of an odometer, the odometer can be set at the same mileage as before such service, the odometer shall be adjusted to reflect that mileage registered on the odometer of the motor vehicle before the service. If the odometer cannot be set at the same mileage as

before the service, the odometer of the motor vehicle shall be adjusted to read "zero."

Section 4549.45 (Notice of Odometer tampering.)

No person shall transfer a motor vehicle if the person knows or should reasonably know that the odometer of the motor vehicle has been changed, tampered with, or disconnected to reflect a lesser mileage or use, unless that person gives clear and unequivocal notice of such tampering or of his reasonable belief thereof, to the transferee in writing prior to the tranfer. In a prosecution for violation of this section, evidence that a tranferor or his agent has changed, tampered with, disconnected, or failed to connect the odometer of the motor vehicle constitutes prima-facie evidence of knowledge thereof.

Section 4549.46 (Transferor to give true reading.)

No person shall fail to provide the true odometer disclosures required by section 4505.06 of the Revised Code. The tranferor of a motor vehicle is not in violation of this section's provisions requiring a true odometer reading if the odometer reading is incorrect due to a previous owner's violation of any of the provisions contained in sections 4549.42 to 4549.46 of the Revised Code, unless the transferor knows of the violation.

TITLE 28 UNITED STATES CODE, SECTION 1257

Section 1257. State courts; appeal; certiorari

Final judgements or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court as follows:

(1) By appeal, where is drawn in question the validity of a treaty or statute of the United States and the decision is against its validity.

(2) By appeal, where is drawn in question the validity of a statute of any state on the ground of its being repugnant to the Constitution, treaties or laws of the United States, and the decision is in favor of its validity.

(3) By writ of certiorari, where the validity of a treaty or statute of the United States is drawn in question on the ground of its being repugnant to the Constitution, treaties or laws of the United States, or where any title, right, privilege or immunity is specially set up or claimed under the Constitution, treaties or statutes of, or commission held or authority exercised under, the United States.

For the purposes of this section, the term "highest court of a State" includes the District of Columbia Court of Appeals.

AMENDMENT V

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

AMENDMENT XIV

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Section 2. Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice President of the United States, Representatives in Congress, the Executive and Judicial officers of a State, or the members of the Legislature thereof, is denied to any of the male inhabitants of such State, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for the participation in rebellion, or other crime, the basis of representation

therein shall be reduced in the proportion which the number of such male citizens shall bear to the shole number of male citizens twenty-one years of age in such State.

Section 3. No person shall be a Senator or Representative in Congress, or elector of President and Vice President, or hold any office, civil or military, under the United States, or under any State, who, having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any State legislature, or as an executive or judicial officer of any state, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may by a vote of two-thirds of each House, remove such disability.

Section 4. The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States nor any State shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave; but all such debts, obligations and claims shall be held illegal and void.

Section 5. The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that three copies of the foregoing were served on Joe R. Fodal, Attorney for Appellee, by depositing them in a United States post office, first class postage prepaid, addressed to him at his office to wit: 11½ South Central Avenue, Fairborn, Ohio 45324, on this 9th day of April, 1987.

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